



Before the  
Federal Communications Commission

Washington, DC 20554

In the Matter of :

International Settlements Policy Reform  
International Settlement Rates

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IB Docket No. 02-234  
IB Docket No. 96-261

**Orange SA comments on  
Notice of Proposed Rulemaking**



## **About Orange SA**

Orange SA is a worldwide mobile group with mobile network operations and minority interests in 22 countries across the world. Most of our operations and interests are in Europe, although we have operations in eight countries outside Europe, as well as licensing agreements for non-affiliated mobile networks to use the Orange brand in four countries outside Europe.

As the business of Orange SA is a mobile-oriented business, its comments are focused on mobile related issues, particularly those raised in Section III.D, paragraphs 45-51 of the Commission's NPRM.

## **Summary of Comments**

Market liberalisation has taken place very rapidly in many countries outside the US, particularly within Europe. As a result, there is both effective competition (especially in mobile markets) and independent regulation. These developments ensure that the Commission's goals in regulating the US international market place are being met.

It is clear and widely accepted that the costs of handling an incoming call on a mobile network are higher than the equivalent costs for terminating a call on a fixed network. Prima facie, it is not unreasonable in countries and for operators adopting the "calling party pays" principle for termination charges for calls to mobile to be higher than termination charges for calls to fixed lines.

It would therefore be unreasonable and detrimental to expect recipients of calls to a mobile in countries where "calling party pays" is the market norm to have to pay the mobile "surcharge" which one might expect the called party to pay in a "receiving party pays" regime. Forcing such a change would not be beneficial either to consumers in countries outside the US or to US consumers.

It is not unfair in principle for callers to pay a "surcharge" on calls to mobiles because people making such calls do thereby generate additional benefits for themselves.

National regulators in foreign countries have already addressed the issue of cost orientation in respect of mobile termination charges, or are in the process of addressing this issue. The Commission should therefore have confidence that the interests of US consumers are being protected:

- where a country has an independent regulator; and
- so long as the mobile termination charges applied to international calls are no higher than the termination charges applied in that country to domestic calls.

Transparency of pricing for calls to international destinations is the responsibility of the calling party's operator and not of the terminating overseas mobile operator. Foreign mobile operators should continue to assist US originating operators by, for example, providing clear information on how to recognise foreign mobile numbers.

There are no competitive concerns in respect of the International Settlements Policy arising from international roaming agreements between mobile operators.

Where a foreign carrier is in a multiple player market and does not have a dominant position in the termination of international calls, it should not be relevant to consider that carrier's ownership structure as a factor in the considering the lifting of International Settlements Policy requirements.

## **Overall market view**

Orange believes that in the majority of countries in which it operates or has an interest there is effective competition in the mobile market, and effective and independent regulation of mobile operators. This is particularly true of the market and regulatory situation in European countries. Therefore, Orange believes that the Commission's goals in regulating the US international market place are met through the competitive operation of the market and the independent regulation of market players in those European countries, namely:

- effective competition in the global market for communications services is being encouraged;
- anti-competitive conduct in the provision of international services or facilities is being prevented; and
- foreign governments have been encouraged to and have in fact opened their communications markets.

## **Additional costs incurred in calling mobiles**

Orange SA submits that it is clear and widely accepted that the costs of handling an incoming call on a mobile network are higher than the equivalent costs for terminating a call on a fixed network. Therefore, *prima facie*, it is not unreasonable in countries and for operators adopting the "calling party pays" principle for termination charges for calls to mobile to be higher than termination charges for calls to fixed lines. To this extent, a mobile "surcharge" is to be anticipated.

Orange SA further submits that it would be unreasonable and detrimental to expect recipients of calls to a mobile in countries where "calling party pays" is the market norm to have to pay the mobile "surcharge". In such countries, the call recipients would not normally expect to pay any "surcharge" for calls received by them on their mobile phones – such a charge would therefore be unexpected. Moreover, in this case, the "surcharge" would apply only on international calls received from the US or, more widely, from those countries in which "receiving party pays" is the norm<sup>1</sup>. While one accepts that the same argument applies in reverse to the caller in this situation – as a caller in a "receiving party pays" country would similarly not expect to pay a mobile "surcharge" on calls to certain countries, the key differentiating factor is that calling parties are in control of the calls they choose to make, whereas recipients of calls are not.

It is possible, if difficult, to educate consumers in a country generally operating under the "receiving party pays" model that international calls made by them to mobiles in certain countries will incur a "surcharge". Such customers can then choose to adjust their calling behaviour accordingly, either to continue with the call, not to make it (to call a fixed line instead or to demand a return call) or to shorten the length of the call. However, the ability to educate the mobile recipients of such calls does not exist nor, even if such education were possible, would it be possible for the mobile call recipient to exercise choice to the extent available to calling parties. In most cases, recipients of international calls to mobiles do not receive calling line information which would enable them to understand whether the country from which the call was originated operated a "receiving party pays" model and therefore whether a

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<sup>1</sup> It is worth noting that, in most countries, whether the "calling party pays" or "receiving party pays" model becomes the market norm is a result of commercial choice rather than of regulatory requirements.



“surcharge” might be payable on receipt of the call. Therefore, the recipient of such calls does not have the degree or flexibility of choice over the call which is available to the caller. The recipient’s only choice is refuse to accept all international calls which he/she suspects may be from a country with a “receiving party pays” model. Orange SA submits that forcing consumers into making such a stark choice in respect of international calls to mobiles is neither beneficial to consumers in countries outside the US nor is it likely to operate to the benefit of US consumers.

## **Fairness**

If callers to mobiles are to pay a “surcharge” on such calls, it is important to consider whether such a result, even if economically justifiable, is “fair” or at least not “unfair”. Orange SA submits that it is reasonable for callers to mobile to pay a “surcharge” on such calls because people making calls to mobiles do generate additional benefits for themselves, notably:

- the ability for them to make contact with the people being called, wherever those call recipients happen to be and whatever time of day it is at the time of the call; and
- the ability to ensure person-to-person contact rather than contact with a specific location (person-to-place).

In the context of international calls, such benefits may be even more important than for normal domestic (within country) calls since callers may be less able to judge in what location the call recipient will be at the time of a particular call, given the larger time zone differences experienced.

Orange SA accepts that recipients of calls to mobiles also benefit from receiving such calls and that it therefore could also be argued to be “fair” for recipients of such calls to pay the “surcharge”. However, the important point to note is that neither possibility is “unfair” in the sense that both calling and called parties benefit from the added value offered by mobility in the call. Therefore, both “receiving party pays” and “calling party pays” can be considered to be reasonable and fair charging models for such calls.

## **Cost orientation**

Orange SA accepts that concerns have been raised about the extent to which the level of mobile “surcharges” in countries operating the “calling party pays” model are cost-oriented. It is understandable that the Commission is concerned about the impact of this question upon US consumers. However, the debates which have taken place in regard to this issue are highly complex, revolving around matters of regulatory judgement concerning the economic allocation of common and fixed costs between different mobile services. It is clear that national regulators are examining the issue and, where the national regulators believe that there is a problem, have either:

- addressed the issue through price regulation, for example in France and Austria; or
- commenced investigations as to whether price regulation is required, for example in the UK and the Netherlands.

Given that national regulators have already addressed this issue or are in the process of addressing the issue, Orange submits that the Commission should have confidence that the interests of US consumers are being protected:

- where a country has an independent regulator – since it is then reasonable for the Commission to rely on national regulation in that overseas country to ensure that there is no abuse of market power by mobile network operators; and
- so long as the mobile termination charges applied to international calls are no higher than the termination charges applied in that country to domestic calls.

### **Transparency of pricing**

Transparency of pricing is clearly a critical issue for consumers, particularly those making calls to international destinations. However, Orange SA submits that responsibility for making clear the prices of such calls, including to overseas mobiles, falls to the calling party's operator and not to the terminating overseas mobile operator. This is because:

- the terminating overseas mobile operator has no visibility of the end user price charged to the calling customer – it can only know the wholesale interconnection price charged in respect of the relevant mobile "surcharge";
- the terminating overseas mobile operator has no commercial relationship with the calling customer and no obvious means to communicate with the customer; and
- the originating US operator controls the end user retail pricing applied to such international calls and has the existing commercial relationship with the customer.

Foreign mobile operators should of course continue to assist US originating operators in increasing price transparency for US consumers by, for example, providing clear information on how to recognise foreign mobile numbers.

### **International roaming**

Orange SA notes that the Commission has also remarked upon concerns associated with the growth in international roaming agreements between mobile operators and the impact which this might have on the International Settlements Policy (Section III.B, paragraph 27 of the Commission's NPRM). However, it is important to recognise that international roaming is a totally different market to the traditional international calls market and that the concerns which gave rise to the basis for the Commission's International Settlements Policy do not apply in the case of international roaming. In particular:

- Nearly all countries have multiple player mobile markets – there is no basis for a concern of a competitive imbalance between the US and foreign countries; and
- International roaming agreements are negotiated bilaterally between mobile operators, based upon well-established non-discrimination principles – the approach taken therefore already reflects the principles of the Commission's International Settlements Policy.

Orange SA therefore submits that there are no competitive concerns in respect of the Commission's International Settlements Policy arising from international roaming agreements between mobile operators.



## **Ownership structure**

Orange SA also notes that the Commission has referred to the ownership structure of foreign carriers as a relevant factor in considering the lifting of International Settlements Policy requirements (Section III.B, paragraph 26 of the Commission's NPRM). Orange SA submits that the Commission should review the relevance of this criterion in recognition of the rapid liberalisation of many foreign telecommunications markets so that, where the foreign carrier in question is in a multiple player market and does not have a dominant position in the termination of international calls, it should not be relevant to consider that carrier's ownership structure.

Respectfully submitted

## **ORANGE SA**

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